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The Medicaid Regime

by Michele Cassidy, J.D., LL.M.

Introduction

In response to what Congress perceived as abuses to the Medicaid program, and owing in part to the strength of the long term care insurance industry, on February 8, 2006, the Medicaid statutes were overhauled to effectively negate some planning strategies used by elder law attorneys in the past. Eligibility for institutional benefits in New York is more difficult to achieve, and future Medicaid applications will need a great deal more disclosure and analysis. We have set forth in question and answer form some of the most commonly involved areas of Medicaid planning.

Effective Date of DR

The effective date of the Deficit Reduction Act of 2005 ("DRA") is February 8, 2006, and applies to transactions and events occurring on or after that date.

Transactions and events occurring prior to February 8, 2006 are governed by the earlier eligibility rules.

Here are some of the issues that will impact one's ability to protect assets in the future. We should know at the outset that Medicaid eligibility starts with the applicant being poor. Some people are poor at the outset and some need to take steps to achieve a level of poverty sufficient to make them eligible for the Medicaid program. People, in fear of losing their assets to the costs of long term care, divest themselves of their property which could be used to pay for care. If an applicant gifts assets, we must deal with the Medicaid implications.

What is a gift?

When assets are transferred from one person's name to another, that is called a "gift." The assets could be real estate or personal property. When a gift is made, it is usually done to divest oneself of assets so as to make the person gifting the assets eligible for Medicaid or another means tested government program.

What is a look-back period?

When a person applies to Medicaid to receive some form of Institutional Care (this is care in a nursing home or its equivalent), the Medicaid examiner assigned to review the application must examine all gifts for a predetermined period of time prior to the filing of the application. That period of time, because it looks back from the point of the filing of the Medicaid application, is referred to as a "look-back" period.

How does the old look-back rule compare to the new look-back period?

Under the old law, the look-back period was thirty-six (36) months. Under the new law, the look-back period is sixty (60) months.

When does the new look-back period go into effect?

The new look-back period only applies to gifts made on or after February 8, 2006. Gifts, other than gifts to irrevocable trusts, made prior to February 8, 2006 are still subject to a thirty-six (36) month look-back period. Any medicaid application submitted before February 8, 2009 will also be subject to a thirty-six (36) month look-back period. The length of the look-back period will expand by one month for each month after February, 2009 until we get to February, 2011 when the full sixty (60) month look-back will be fully applicable.

Transfers to irrevocable trusts have been subject to a 60 month look-back period since 1993.

Transfers to revocable trusts are treated as if no transfer has occurred.

Examples

(1) Applicant makes a gift to a child on January 1, 2006. It is under the old thirty six (36) month rule because it was made prior to February 8, 2006.

(2) Applicant makes a gift to a child on June 30, 2009. It is a post February 8, 2006 gift and will be covered by the new sixty (60) month look-back rule.

To what do look-backs rules apply?

Look-backs rules apply to gifts. Gifts of resources ("resources" is just another word for assets) and gifts of income create a concern for the Medicaid program. In an effort to reduce the use of gifting (which is usually- but not always- done to make a person eligible for Medicaid) as a method to become eligible for Medicaid, New York applies the look-back rules to a Medicaid application for Institutional Care benefits (care in a nursing home or in a hospital waiting for placement in a nursing home) Thus the transfer penalty rules no longer apply to community-based waivered services-such as the Long Term Home Health Care program. See GIS 07 MA/018.

Does this mean that the look-back rules do not apply to other Medicaid programs including the receipt of personal care services at home?

Yes. These look-back rules only apply to nursing home care or its equivalent care, which is sometimes referred to as Institutional Care.

Are you telling me that countable assets could be gifted to the point where the applicant has less than that allowed by Medicaid (currently $13,800 in 2009), and that person will be able to obtain Medicaid at home almost immediately?

Yes. The Medicaid application process will take a number of months depending upon the complexity of the application but coverage will be effective retroactively provided the person was eligible during the period for which coverage is sought. As a matter of fact coverage can be retroactively approved for a period of up to 3 months before the application was filed.

Example

Applicant applies for regular home care on November 1, 2009, has not had countable resources in excess of $13,800 since July 15, 2009, has made no gifts of resources in the previous three years, and applies for Medicaid in a nursing home. Coverage will be provided back to August 1, 2009.

When does the ineligibility period begin to run under the new rules?

This question raises the most significant change under the DRA. In the past a Medicaid the ineligibility period began to run soon after the gift was made, and therefore the ineligibility period would frequently expire before the person actually needed a form of Institutional Care. Thus, the ineligibility period evaporated over time. Now the ineligibility period does not begin to run until the applicant is (1) receiving a form of institutional care (such as care in a nursing home), (2) has $13,800 or less in countable resources, and (3) applies for Medicaid but is denied owing to the prior gifting of assets.

Thus the following would be necessary to start the period:

(i) First, the person must have no more than $13,800 in nonexempt resources;

(ii) Next, the person must have started to receive some form of Institutional Care;

(iii) Next, the person must apply for institutional benefits;

(iv) Finally, the person must be denied because of the imposition of the penalty period. Thus the denial must state that the sole reason for the denial is the imposition of an ineligibility period.

Examples

(1) Applicant transfers $100,000.00 to child on January 10, 2006, then applies for Medicaid nursing home care on November 1, 2006. Old rules would apply because transfer took place prior to February 8, 2006. Ineligibility period would begin to run on February 1, 2006.

(2) Applicant transfers $100,000.00 to child on March 1, 2010, then applies for Medicaid nursing home care on November 1, 2010. New rules apply because transfer took place after February 8, 2006. Ineligibility period would begin to run on November 1, 2010 assuming that applicant was otherwise eligible for institutional Medicaid benefits.

Is it true that once the period of ineligibility begins to run, it continues to run even if the person no longer needs Medicaid or no longer needs a form of Institutional Care?

Yes.

Example

A person needs care in a nursing home where Medicare is unavailable to pay for the care and the person has less than $13,800.00 in resources. Assume that the person had previously gifted assets thus creating a potential ineligibility period. The person applies for Medicaid to assist with the cost of care at the nursing home. Medicaid is denied owing to the penalty period. Once that happens, the penalty period begins to run until it expires even though the person goes home shortly thereafter.

What happens if a person applies for Medicaid institutional benefits and the application is denied because of the imposition of a penalty period?

If the application is denied solely because of the imposition of a penalty period, the applicant will be notified of the length of time in which he or she shall be ineligible for Medicaid institutional benefits. At the end of this period of ineligibility, the applicant will need to submit a second application for Medicaid institutional benefits, at which time the application will be accepted in the absence of new developments impacting eligibility.

Are there any assets that are not countable?

Up until now, we have used the word "countable." There are some assets which are not countable. These are set forth in the Social Services Law of New York. But for our purposes the chief non-countable asset is the primary residence or home (sometimes referred to as the "homestead"). Even though the residence is not counted, a gift of the residence is still considered a gift and will affect one's eligibility for institutional benefits.

Are there any gifts of resources which are exempt from these rules?

Yes. The following gifts will not produce an ineligibility period:

1. All gifts by one spouse to the other spouse;

2. A gift of a principal residence to a caretaker child living in the residence for at least the two year period prior to the parent going into a nursing home or a gift of the residence to a sibling of the person living at the residence for the one year period prior to the sibling going into a nursing home[1].

3. Gifts to minor or disabled children or gifts to a trust for the sole benefit of a disabled child or another disabled person under age 65.

There are other gifts which may qualify for an exemption, such as (i) transactions which involve an effort to sell at fair market value but in fact the sale was for less than fair market value, (ii) gifts of resources for reasons other than obtaining Medicaid; for example, assets were gifted for a son's wedding or to establish a college fund for a grandchild and Medicaid was not considered,[2] and (iii) resources gifted have been returned to the Applicant.

Example: A grandmother in good health makes a gift to grandchild to allow the grandchild to attend law school, or for a wedding, or a gift to a charity at a time when accessing long term care services was not a consideration in the making of the gift.

Does the new medicaid laws allow for hardships?

Yes. There are undue hardship provisions in the new law but obtaining an undue hardship status has historically been difficult. Usually obtaining the status requires a certain degree of innocence. How does one recognize an undue hardship from a mere hardship? What makes the hardship "undue?"

A hardship will now be available by federal statute when it is shown that the penalty period would deprive the applicant of medical care and the deprivation is shown to (i) endanger the health or life of the applicant OR (ii) would deprive the individual of food, clothing, shelter, or other necessities of life; it would also seem that if a spouse made a transfer unbeknownst to the applicant, that might qualify for a hardship especially if the spouses were not living together.

Example: Say a parent gives $100,000 to a child on February 10, 2006. The parent applies for Medicaid on February 10, 2009 and has countable resources of less than $13,800. Parent seeks to re-obtain the $100,000 from the child but

(i) child invested it in a new house and the $100,000 is no longer available,

(ii) child lost the $100,000 gambling,

(iii) child gave the $100,000 to former spouse as part of marital settlement, or

(iv) child just refuses to give the $100,000 back and claims that it was given to child as a gift three years earlier.

Are anyone or all of these scenarios the basis for an "undue hardship?"

Practical Note: Applicant seeks a undue hardship waiver and submits an affidavit from child and from applicant that in February, 2006 child received funds as a gift, applicant filed a gift tax return for 2007, and now child refuses to return the gift. Is this sufficient proof? What level of proof will be required to establish a hardship?

Does the statute require the local medicaid office to let the person know that an application for a hardship may be available?

Yes. The local office is required to do so and procedures will be developed.

Can the nursing home request a hardship for the applicant?

Nursing homes must be paid for their services. To protect their interests and to allow someone to apply where the nursing home resident has no family member willing to get involved, the nursing home is permitted to make the request for a hardship. In order to do so, the nursing home needs to know all of the facts. Indeed a nursing home request for a hardship may garner greater sympathy than that of the family because the nursing home was not a party to the gifting.

Nursing Homes are reluctant to take patients who may need a undue hardship to be eligible for Medicaid.

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What are the hardship rules if a transfer or gift of assets has been made?

We first begin with the question of whether the gift was made exclusively for a purpose other than to qualify for nursing facility services. If that can not be established, then the applicant must show:

1. That the applicant is otherwise eligible for Institutional Care; and

2. Next, the applicant must show that despite the use of best efforts, as determined by the social services district, the applicant or the applicant's spouse has been unable to obtain a return of the assets transferred or to void a trust if the assets were transferred to a trust; and

3. The inability to obtain such care endangers the applicant's health or life; or

4. The denial of Medicaid would deprive the applicant of food, shelter, clothing or other necessities of life.

Are there still asset protection methods available under the new rules?

The simple answer is yes. Its just that counsel will need to be ever more creative and some of the efforts may or may not work. Eventually, once people become familiar with the new rules, certain methods will be known to work and others will be known not to work. In some cases, the applicants have nothing to lose except try to come up with a strategy that has a reasonable chance of succeeding.

Can you provide some ideas about the use of certain strategies, such as the employment of a private annuity?

One area that may provide some assistance is the use of private annuities. Commercial annuities are not as flexible and the payment to the insurance company requires that commissions be paid and a profit be generated for the company writing the annuity.

If you think about it, monies or other assets are sold for an annuity. The payment of the money or other assets would, in the absence of other factors, be a transfer or a gift of resources. But because there is a companion obligation to make annuity payments to the seller of the assets (called an annuitant), the seller of the assets is getting something in return. That something in return, as you will later see, has certain conditions attached to it if the annuity transaction is to avoid being treated as a gift under the new Medicaid rules.

In a situation where there are spouses and one spouse needs Medicaid in a nursing home, the other spouse (the well spouse) may want to dispose of assets without there being an ineligibility period. How can he or she do that? The well spouse might contract with children or a trust by giving children or a trust monies in return for a lifetime annuity. If the well spouse dies prior to the expected date of death, there will be further payments due under the annuity (until the anticipated original date of death of the well spouse). These further payments must be paid to Medicaid up to the benefits, if any, paid by Medicaid for the well spouse (and as a result of an amendment to the DRA, up to the benefits paid by Medicaid for the benefit of the ill spouse as well).

Do the annuities need to be disclosed to medicaid?

They most certainly do. This disclosure of the annuities will occur during the Medicaid application or recertification process. As a condition of eligibility for institutional benefits, the state must require that the interest of the applicant and the interest of the community spouse has in an annuity (or similar financial instrument) be described regardless of whether the annuity is irrevocable or whether it is treated as an asset?

In determining the period of the annuity, must the annuity be for a term certain?

It seems that annuity purchasers who are recipients of Medicaid must make sure that the annuity purchased is actuarially sound. In order to be actuarially sound, the annuity must be for the life expectancy (or shorter period) of the annuitant. So, say a person seeking to be covered by Medicaid in a nursing home purchases an annuity for $100,000, has a life expectancy of 65 months, and the applicable interest rate is 6%. The monthly payments would be $1,805.80. The Chief Actuary of the Social Security Administration has published tables which will assist the annuity purchaser in determining the time the annuity must run.

Note

In my view it makes little sense for a person applying for nursing home Medicaid benefits to purchase an annuity because (1) all payments received under the annuity will be budgeted as income and payable to the nursing home, and (2) upon the death of the person (assuming the person dies prior to his\her life expectancy at the time the annuity was purchased), the State will get all future payments. So under those circumstances, nothing will be protected.

Must all annuities purchased name the State of New York as the holder of the remainder estate even if the annuity is purchased by a community spouse?

It is unclear whether the state would be entitled to receive repayment from the remainder of an annuity if the person purchasing the annuity (say the Community Spouse) died while the other spouse was receiving or had received Medicaid benefits because the annuity must name the State as the recipient of any monies paid out to the annuitant's estate to the extent of the Medicaid benefits paid for that annuitant. An amendment to the federal statute says that the state gets whatever is left in the annuity irrespective of whether the annuitant or the spouse of the annuitant received Medicaid benefits, so I'll let the reader decide on what this language, appearing in Section 366 of the New York Social Services Law means:

...the purchase of an annuity shall be treated as the disposal of an asset for less than fair market value unless: the state is named as the beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant, or the state is named in the second position after a community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value; and the annuity meets the requirements of section 1917©(1)(G) of the federal social security act....

The beginning of the statute seems to limit the recovery to Medicaid benefits paid to the annuitant and not the annuitant's spouse. But then it goes on to state that the annuity must meet the requirements of section 1917©(1)(G) of the federal social security act. One of those requirements is that the state is entitled to recover from anything remaining on the annuity if Medicaid benefits were paid for either spouse. So in my view, and in keeping with the provisions of the federal social security act, if either spouse receives Medicaid, the balance of the annuity payments must be used to discharge that repayment obligation.

Must the annuity purchased by the community spouse be actuarially sound in order that such purchase avoid being treated as a transfer of assets?

The rules about the annuity being actuarially sound apply only to the spouse applying for Medicaid. Thus a community spouse may enter into a non actuarially sound annuity without that transfer being treated as a gift. If at a later date the community spouse him\herself needs Institutional Care, the purchase of a nonactuarially sound annuity will produce a period of ineligibility for institutional Medicaid benefits. So one needs to be careful not to outsmart oneself.

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Do the annuity rules apply to retirement plan annuities such as an annuity under IRC § 408, 408-k, 408A (a Retirement Plan)?

The purchase of annuity within a Retirement Plan is not subject to the requirements of being actuarially sound, nonassignable, and in equal payments, etc.

What happens if a medicaid recipient had entered into a private annuity with child and the child defaults?

Example

One year goes by and child loses his job and defaults on the annuity payments. Thus there is no monthly income from the annuity. It would appear that DSS could well ask for an assignment and then pursue child for the payments.

Should families consider using a trust as the obligor under a private annuity?

The benefit of a trust is that the money given to the children is less likely to disappear or get involved with a divorce or the child's creditors. Thus a trust for this purpose is a wise approach.

The children would establish the trust as a grantor trust belonging to the children. The trust would be created solely to make the payments under the annuity.

How can one make sure a Private Annuity works?

1. The annuity should be for fair market value;
2. Use the applicable federal rate for the month in question;
3. Name the State as preferred remainder subject to rights of spouse, minor or disabled child; and
4. Use Social Security Administration Chief Actuarially Publication based on life expectancy of annuitant.

Will the use of irrevocable grantor trusts become more common?

We have always used grantor trusts for the residence. By using a grantor trust we are able to take advantage of the $250,000-$500,000 exemption from the capital gain resulting from the sale of the principal residence. We also would place appreciated assets in the trust so that if the asset is sold by the trust during the lifetime of the grantor any gain resulting from the sale will be taxed at the grantor's income tax rates.

Often a parent is concerned about the potential divorce of a child, or that a child may or does have creditors, etc., by using a trust, the assets in the trust do not belong to the child and will be protected during a divorce or other action to seize the trust assets.

In the case of using a private annuity, the funds are given to the child(ren) and then placed into an irrevocable trust whose sole aim is to satisfy the contractual private annuity agreement.

How about using a promissory note where a parent lends money to children in return for a promissory note?

Promissory notes may be used but the note obligation including interest must be repaid over the life expectancy of the lender\purchaser\applicant. The payments to be made are similar to the payments required under an annuity. That is, the payments must be equal with no deferral or balloon payments permitted. The note obligation may not be cancelled at death. And while there is no obligation to name the State as a remainder, the transfer of an interest in the note would in my judgment be considered a gift subject to the ineligibility rules.

How about selling a 50% interest in a home or other real estate to child for an private annuity or a note and then having the child and parent own the home as joint tenants with right of survivorship?

The interest in the home will not be an available asset because it cannot be reduced to cash since the child who may have purchased the 50% may refuse to sell. The child needs to have the funds to pay the annuity payments required under its terms or the promissory note and that sometimes could be an issue.

The purchase of a joint tenancy does create a tax issue. First, have we somehow destroyed the right to the STAR exemption since one of the owners does not live at the premises?

Upon the death of the parent, only 50% of the property will receive a step up in basis but this should not be a major issue since, the purchase of the 50% interest itself will produce a step up in basis for 50% of the property independent of the step up in basis on death.

Can the applicant buy a life estate in the child's home and thereby protect the funds paid to the child in return for the life estate?

Yes but the parent needs to live in the home for the one year period thereafter. The parent must actually live in the home and not maintain another principal residence.

Example

Lets say that a parent buys a life estate in a child's home intending to live in the home for the full year but doesn't because of disagreements or because the parent becomes ill. The parent now needs institutional care prior to the running of the one year period. Will there be any consideration to the fact that events did not unfold as expected and perhaps the parent should not be penalized for failing to live in the home as the parent's primary residence for the Medicaid required one year period?

Are there special medicaid rules dealing with the purchase of a life estate in the residence of another?

Yes. To avoid having a period of ineligibility imposed for the purchase of a life estate in the residence of another, the purchaser must reside in the residence for at least a continuous period of one year after the purchase is made. Does this preclude a purchaser from having a second home? I think a second home is permissible provided that most of the living time is spent in the residence in which the owner has a life estate.

In addition, many homes of children are encumbered by mortgages. Does such a sale violate the due on transfer clause of the mortgages today? One might look at the provisions of 12 USC § 1701 j-3. That statute contains certain exceptions to the due on sale provisions and would prevent the use of a due on sale clause in connection with a transfer of a life estate from a parent to a child or vice versa. So, on that level, the due on sale clause should not be an issue.

What are the income tax consequences for the child who sells a life estate to a parent?

It would seem that under Treasury Regulation § 1.121-4(e)(1) the sale of a life estate does allow for the use of the exemption available when a person who has lived in a principal residence for at least two out of the most recent five years sells that residence for a gain.

Can the applicant buy a life estate in investment property or raw land?

It would seem that such an approach would in fact work. But with the ownership of a life estate it would mean that all of the net income from the investment property would be paid to the parent and that could create a problem. The purchase of a life estate in raw land would appear to work.

Could an applicant purchase an interest in the home of another individual, such as a child, for investment purposes, without retaining a life estate in this property?

Yes. It is not a gift because the applicant received something in return, to wit, an ownership interest in real property. Accordingly, Medicaid would not consider this purchase to be a transfer of assets that would result in a period of ineligibility for Medicaid institutional benefits. To be effective, the applicant and the other individual should own the property as joint tenants with right of survivorship.

Could the child enter in a partnership with the parent to make investments?

If a parent invested monies with a child in a family general partnership which tied up the funds, it would appear that such would be a method of making the parent eligible for Medicaid. It is not a gift because the parent received something in return, to wit, a partnership interest. More needs to be discussed about this approach.

I heard that changes were made to the principal residence rules. Is that correct?

Yes. In the past, a Medicaid applicant was able to own a residence of unlimited value. With the changes brought by the new law, and the laws of New York, the applicant's interest in the equity of the residence can not exceed $750,000. However, if (1) a spouse is living in the residence or (2) a child under age 21, a disabled child or a blind child, is living in the residence, the $750,000 limit will not apply.

If there is a spouse living in the residence, it would seem that a simple solution would be to transfer the residence or some portion of the residence to the well spouse as a way out of the issue, although few Medicaid applicants have $750,000 of equity in their residence in any case. In practice then it applies to a situation where a person lives alone.

> **Note**
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> Where you have that much equity, will this be an incentive for an adult child to move back in with the parent and then have the residence transferred to the adult child after satisfying the caretaker child exemption?

What if the home has a number of owners? How will the $750,000 limit apply?

> **Example**
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> Only the fractional interest of the applicant for Medicaid will apply. So if Medicaid applicant lives in a residence worth $1.0 million and which is owned 25% by an adult child and 75% by the medicaid applicant, then $750,000 will be attributed to Medicaid applicant.

Are reverse mortgages permissible?

Not only are they permitted, they are encouraged in order to reduce the equity to less than $750,000 but now you have cash to spend on care and you have effectively used your own assets to pay for the care.

Can a child purchase the property?

If a child can afford to provide the funds, I would rather the child do it pursuant to a purchase rather than a loan in the form of a reverse mortgage. By purchasing 50% of the fair market value of the property, the child may obtain the entire property by surviving the parent.

Lets say that a person is already on community medicaid; when, if ever will the home equity limits apply?

The home equity limit of $750,000 applies only in the event that the application is seeking medical assistance for nursing facility services and other long term care services. The limit does not apply to personal care services of Community Medicaid.

What would happen if no lender willing to provide a reverse mortgage?

It would seem that if one could not borrow to reduce the equity value of the residence, that might be the basis for an undue hardship.

Are there any other ideas that people could employ to protect assets?

Since financial eligibility for Medicaid will be more difficult to obtain unless applicants become that much more creative, new and perhaps more aggressive approaches are needed.

Will the concept of a legal impediment apply to a person who applies for Medicaid but has an interest in his residence valued at more than $750,000?

Yes. An undue hardship will exist when the denial of Medicaid is due to an excess home equity provided that the applicant can show that there is a legal impediment which prevents the Medicaid applicant from accessing the equity interest.

> **Example**
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> Same as prior example except the residence is worth $1.2 million and John's son is not agreeable to a borrowing against the property. This would be a legal impediment preventing John from accessing his excess equity.

Isn't is true that much of the care provided to the elderly is in the form of free services provided by family members?

Yes. And that is why it is important to consider the use of a personal service contract so that family caregivers are appropriately compensated for the care being provided. We use a personal service caregiver agreement which reflects the care to be given over a period of time or the life expectancy of the person being given the care. These contracts should live up to the requirements contained in a release by New York which deals with the increase in use of the personal service contract. Remember also that there are income tax obligations for the recipient of the monies paid under the contract.

If a medicaid applicant enters into a personal service contract with their child, and transfers a lump sum to the child as compensation for future services, would this transfer protect the applicant's funds from having to be spent on the costs of long-term care?

Yes. Such a transfer would not be considered a gift because the parent is receiving services from the child in return for these transferred assets. Accordingly, no period of ineligibility would be imposed upon the applicant so long as the services and the compensation are for fair value.

How are Retirement Plan Assets Treated in the Medicaid context?

Many clients have IRAs and other retirement plans. This is the treatment. Say H is 78 years old, has an IRA of $100,000, and has applied for care for personal care at home. Since required minimum distributions will have started, the amount remaining in the IRA is not counted as a resource but the annual distributions are counted as income which can be protected by resort to the use of a pooled supplemental needs trust established by a not for profit entity.

Lets say that after a while H needs care in a nursing home. The required distributions will be counted as income but the remaining amount will not be counted. W, who is 69 years old, has a $50,000 IRA. Spouses of people obtaining Medicaid institutional care (nursing home care) are limited in the value of countable resources they are permitted to possess. The value limit changes slightly from year to year. The point is that the $50,000 counts towards this limit which is now just under $100,000. To avoid this result, W could start taking distributions even before attaining 70 and ½. The distributions would be budgeted as income to W but the remainder would not be counted as a resource. This would allow the spouse to retain more assets in her name.

[1] These exempt forms of gifts have further requirements which are not necessary for this discussion.

[2] 42 USC 1396p (c)(2)(C)(ii): the assets were transferred exclusively for a purpose other than to qualify for medical assistance...